

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

MARK W. SHEPHERD,

Plaintiff,

vs.

**Civil Action No. 2:04 CV 69
(Maxwell)**

**JO ANNE B. BARNHART,
COMMISSIONER OF
SOCIAL SECURITY,**

Defendant.

ORDER

By Order entered April 28, 2005 (Docket No. 12), the Court referred the cross-motions for summary judgment filed in the above-styled Social Security action to United States Magistrate Judge James E. Seibert, pursuant to 28 U.S.C. § 636(b)(1)(B); Rule 72 of the Federal Rules of Civil Procedure; and Rule 7.02(c) of the Local Rules of Civil Procedure, with directions to consider the same and to submit to the Court proposed findings of fact and a recommendation for disposition.

On January 6, 2006, Magistrate Judge Seibert entered¹ a Report And Recommendation (Docket No. 13) wherein the parties were directed, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e) of the Federal Rules of Civil Procedure, to

¹Magistrate Seibert's Report And Recommendation was not actually filed until January 9, 2006.

file any written objections thereto with the Clerk of Court within ten (10) days after being served with a copy of said Report And Recommendation. Magistrate Judge Seibert's Report And Recommendation expressly provided that a failure to timely file objections would result in waiver of the right to appeal from a judgment of this Court based thereon.

The docket in the above-styled civil action reflects that no objections to Magistrate Judge Seibert's January 6, 2006, Report And Recommendation have been filed.

Upon consideration of said Report and Recommendation, and having received no written objections thereto², the Court accepts and approves the Report And Recommendation. Therefore, it is

ORDERED that Magistrate Judge Seibert's Report And Recommendation (Docket No. 13) be, and is hereby, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly,

1. The Defendant's Motion For Summary Judgment (Docket No. 9) is

GRANTED;

²The failure of the parties to object to the Report And Recommendation not only waives their appellate rights in this matter, but also relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

2. The Plaintiff's Motion For Summary Judgment (Docket No. 6) is **DENIED**;
and
3. The above-styled civil action is **DISMISSED** and **RETIRED** from the
docket of this Court.

The Clerk of Court is directed to transmit copies of this Order and the Judgment
Order to counsel of record.

ENTER: February 2, 2006

/S/ Robert E. Maxwell
United States District Judge